

§217.4

8 CFR Ch. I (1–16 Edition)

of this part with the exception of arrival on a signatory carrier.

[62 FR 10351, Mar. 6, 1997]

§217.4 Inadmissibility and deportability.

(a) *Determinations of inadmissibility.*

(1) An alien who applies for admission under the provisions of section 217 of the Act, who is determined by an immigration officer not to be eligible for admission under that section or to be inadmissible to the United States under one or more of the grounds of inadmissibility listed in section 212 of the Act (other than for lack of a visa), or who is in possession of and presents fraudulent or counterfeit travel documents, will be refused admission into the United States and removed. Such refusal and removal shall be made at the level of the port director or officer-in-charge, or an officer acting in that capacity, and shall be effected without referral of the alien to an immigration judge for further inquiry, examination, or hearing, except that an alien who presents himself or herself as an applicant for admission under section 217 of the Act and applies for asylum in the United States must be issued a Form I-863, Notice of Referral to Immigration Judge, for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).

(2) The removal of an alien under this section may be deferred if the alien is paroled into the custody of a Federal, State, or local law enforcement agency for criminal prosecution or punishment. This section in no way diminishes the discretionary authority of the Attorney General enumerated in section 212(d) of the Act.

(3) Refusal of admission under paragraph (a)(1) of this section shall not constitute removal for purposes of the Act.

(b) *Determination of deportability.* (1) An alien who has been admitted to the United States under the provisions of section 217 of the Act and of this part who is determined by an immigration officer to be deportable from the United States under one or more of the grounds of deportability listed in section 237 of the Act shall be removed from the United States to his or her country of nationality or last residence. Such removal shall be deter-

mined by the district director who has jurisdiction over the place where the alien is found, and shall be effected without referral of the alien to an immigration judge for a determination of deportability, except that an alien who was admitted as a Visa Waiver Program visitor who applies for asylum in the United States must be issued a Form I-863 for a proceeding in accordance with 8 CFR 208.2(c)(1) and (c)(2).

(2) Removal by the district director under paragraph (b)(1) of this section is equivalent in all respects and has the same consequences as removal after proceedings conducted under section 240 of the Act.

(c)(1) *Removal of inadmissible aliens who arrived by air or sea.* Removal of an alien from the United States under this section may be effected using the return portion of the round trip passage presented by the alien at the time of entry to the United States as required by section 217(a)(7) of the Act. Such removal shall be on the first available means of transportation to the alien's point of embarkation to the United States. Nothing in this part absolves the carrier of the responsibility to remove any inadmissible or deportable alien at carrier expense, as provided in the carrier agreement.

(2) *Removal of inadmissible and deportable aliens who arrived at land border ports-of-entry.* Removal under this section will be by the first available means of transportation deemed appropriate by the district director.

[53 FR 24901, June 30, 1988, as amended at 56 FR 32953, July 18, 1991; 62 FR 10351, Mar. 6, 1997; 74 FR 55738, Oct. 28, 2009]

§217.5 Electronic System for Travel Authorization.

(a) *Travel authorization required.* Each nonimmigrant alien intending to travel by air or sea to the United States under the Visa Waiver Program (VWP) must, within the time specified in paragraph (b) of this section, receive a travel authorization, which is a positive determination of eligibility to travel to the United States under the VWP via the Electronic System for Travel Authorization (ESTA), from CBP. In order to receive a travel authorization, each nonimmigrant alien intending to travel to the United